

NOTES

Joining the Culture Club: Examining Cultural Context When Implementing International Dispute Resolution

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I. CULTURE AS CONTEXT: AN INTRODUCTION

Dispute resolution is a transcultural phenomenon. Throughout history, countries have created institutionalized forms of dispute resolution reflecting their own unique cultural beliefs and norms.¹ As each form reflects that particular country's traditions, experiences, and philosophies, when a conflict arises that transcends national borders and becomes an international affair, these different dispute resolution cultures necessarily collide. The parties to these suits and the dispute resolution provisions that guide them differ. A party's nationality, background, and conception of justice all affect that party's interaction in a dispute resolution forum.² Although a neutral international forum for resolving disputes would be ideal, it is far from realistic and cannot wholly be relied upon.³ Whether operating within the confines of one particular country, developing arbitration in a transitioning state, or resolving disputes internationally, understanding the cultural context in which one is working is crucial to successful dispute resolution.

St. Francis of Assisi provides a religious example of how understanding cultural context yields more successful dispute resolution. As St. Francis assisted two disputants, he chose to mediate with a religious song that reminded the participants not of God or Christianity, but of the value of order and peace—broader cultural values they could both agree upon and accept.⁴

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¹ Although this Note speaks in terms of "dispute resolution" generally, it examines the cultural context of alternative dispute resolution models in particular, leaving the analysis of court structures outside the scope of this Note.

² Jan K. Schaefer, *Abandoning Colonial Arbitration Laws in Southeast Asia- I: An Analytical History*, 15 MEALEY'S INT'L ARB. REP., July 2000, at 30, 32.

³ For details on how to develop a more reliable and expressly international system of dispute resolution, see generally *id.*

⁴ F. Matthews-Giba, *Religious Dimensions of Mediation*, 27 FORDHAM URB. L.J. 1695, 1695-96 (2000).

This type of transcultural understanding is the ultimate goal of a culturally conscious system of dispute resolution.

Certain areas of alternative dispute resolution already take into account the cultural context in which they operate. For example, researchers have noted the cultural dimensions of interpersonal conflict and the extent to which conflicts arise out of the cult of personality.⁵ Additionally, practitioners often take into account organizational culture when implementing dispute resolution programs.⁶ Both of these examples are focused in American or Western-based models, however, and miss the larger cultural context. This Note focuses on culture in a global sense and traces, through key countries, how cultural nuances affect alternative dispute resolution as implemented in every corner of the globe.

This Note will introduce the foundations of international dispute resolution, namely, the motivation behind and globalization trends supporting increased efforts towards cultural awareness in dispute resolution practices. This Note will also present a conceptual framework in which cultural issues in dispute resolution may be understood. Global perspectives of dispute resolution will be examined, beginning with an introspective focus on American assumptions and traveling outward to three categories of global models as exemplified in Asia and the South Pacific. This Note includes lessons learned in the area of international arbitration and practical advice practitioners should keep in mind. Finally, this Note will conclude with an outlook on the future of culturally conscious international dispute resolution.

II. THE FOUNDATION OF INTERNATIONAL DISPUTE RESOLUTION

International dispute resolution is by no means a novel concept. However, the relatively recent globalization of the world economy has dramatically increased its use. Lawyers are called upon in greater numbers and with greater frequency than ever before to assist in international disputes. The international expansion of dispute resolution practices has not only created a market for international specialists, but also has placed a burden of cultural competence on attorneys unseen in previous generations. Today's

⁵ The more narrowly focused study of interpersonal culture in the context of conflict resolution is outside the scope of this Note. For contemporary and entertaining case studies on interpersonal culture or the cult of personality, see generally JONATHAN G. SHAILOR, *EMPOWERMENT IN DISPUTE MEDIATION: A CRITICAL ANALYSIS OF COMMUNICATION* (1994).

⁶ Organizational culture is also beyond the scope of this Note. For more information on the cultural aspects of ADR in the organizational context, see ALLAN J. STITT, *ALTERNATIVE DISPUTE RESOLUTION FOR ORGANIZATIONS: HOW TO DESIGN A SYSTEM FOR EFFECTIVE CONFLICT RESOLUTION* 41-43 (1998).

practitioners are expected to perform both domestically and abroad, and it is, therefore, vital that they understand the new and unfamiliar international terrain. This Note will explore the underlying motives and rise of international dispute resolution in the current globalization context.

A. The Dangers of Cultural Ignorance

Two primary motives prompting an increased desire to examine cultural context in dispute resolution are fear of the unknown and mistakes born of ignorance.⁷ Take this example of cultural miscues offered by Ann MacNaughton, co-chair of the American Bar Association's Cross-Cultural Negotiations Task Force:

If a female American lawyer and her client travel to Latin America to negotiate a deal, the foreign party might suggest that he and the client meet while his wife takes the lawyer shopping. Outraged, the U.S. lawyer might insist on attending the meeting; relations, however, could sour, potentially jeopardizing the deal.⁸

MacNaughton explains that instead of the gender bias perceived by the attorney, the interaction actually revealed nothing more than differing cultural assumptions about a lawyer's role. Although U.S. attorneys typically play a large role throughout the negotiation process, in some countries, like Latin America, lawyers do not—they are instead just called in at the end of negotiations to finalize documents.⁹ Ignorance of this simple cultural difference jeopardized the entire legal transaction in this example, and happens all too frequently in real life.

Attorneys make many cultural assumptions about their work. Some assumptions may be necessary to function in a global marketplace; however,

⁷ This Note focuses on the need for broad cultural appreciation in dispute resolution as a whole. For more details on procedural innovations in international arbitration, see Alan Scott Rau & Edward F. Sherman, *Tradition and Innovation in International Arbitration Procedure*, 30 TEX. INT'L L.J. 89 (1995).

Spurred by international developments . . . there is increasing interest among parties . . . in making procedural innovations in international arbitration. The impetus for change comes from such diverse sources as the rapid acceleration of cross-cultural influences, experimentation with dispute resolution techniques, and the realities of complex transnational commercial ventures in the world today.

Id. at 90.

⁸ Laurel-Ann Dooley, *Culture Clashes Hinder Deals*, NAT'L L.J., Sept. 13, 1999, at B1.

⁹ *Id.*

assumptions also blind practitioners to the realities in which they operate. American attorneys, for instance, have a very direct style and usually treat business as business, not as part of a larger social relationship. Many other cultures view the relationship as more important than the business itself, however, and simply will not conduct business—or dispute resolution—with a person they mistrust, do not understand, or do not like. Deborah Enix-Ross, legal officer of the World Intellectual Property Organization, cautions that “people underestimate the need to learn a bit about the way business is conducted and the way people respond to one another professionally and socially.”¹⁰ Enix-Ross observed through her own international experience in France¹¹ that awareness of someone’s cultural background yields a greater degree of comfort and trust in relationships.¹² Someone who is willing to understand your cultural background is more likely to understand you as an individual and the negotiation perspective you represent.

Robert Brown, co-chair of the American Bar Association’s International Communications Committee, offers more caution to negotiators. Brown knows first-hand that awareness of cultural differences is essential and offers these preliminary suggestions:

Do some reading on the country—at least you’ll know where it is. Know something of the history. Talk to someone who’s done business there, an American businessman or someone from the Department of Commerce—find out who the trade specialist is in that country and talk to that person. And once you get there, don’t hop off the plane and set up meetings. . . . Don’t do the trilogy of hotels, restaurants, and office buildings. Instead of staying in your hotel room answering e-mail, get up in the morning and walk around.¹³

¹⁰ *Id.*

¹¹ For an interesting legal article detailing French and American cultural differences, see George M. Kraw, Comment, *Vive la McDomination!*, RECORDER, Dec. 1, 1999, at 4. “European leftists routinely rant against ‘McDomination’—the ‘Americanization’ and ‘McDonaldization’ of the world’s economy and culture.” *Id.* Kraw goes on to explain: “[m]any French lawyers fear that the American legal system will similarly overwhelm the rest of the world.” *Id.*

¹² Dooley, *supra* note 8. Enix-Ross offers an example from her experience representing the U.S. Council for International Business. When recommending changes to international mediation, French representatives feared American domination in discussions and imposition of their perspective with no respect for others. Enix-Ross accompanied the head of the French delegation on a walk to Napoleon’s tomb, however, and discovered her journey had two purposes: to reassure the French that she would listen to their side, and to demonstrate that although revolution has its place, force is not always appropriate. *Id.*

¹³ *Id.*

Although Brown's suggestions cannot guarantee you immunity from every embarrassing or potentially job-devastating faux pas, they will at least teach you about the background culture with which you are dealing and remind you to be wary of the unfamiliar cultural terrain. Cultural ignorance is dangerous for lawyers at any time, but especially when negotiating abroad.

B. *The Trend Towards Globalization*

Not only is the prospect of overseas negotiation intimidating, but also it is increasingly imminent. As the globalization of business demands it, many American lawyers are following clients to more distant locales and more alien cultures. Federal government trade statistics (adjusted for inflation) report the value of annual U.S. exports has increased from \$118 billion in 1977 to \$637 billion in 1997.¹⁴ More and more small- and medium-sized companies are joining this trend, contributing to the more than fivefold increase in international trade over the past twenty years.¹⁵ As business booms abroad, so does the demand for culturally competent counsel.

To keep pace with the globalization trend, lawyers need to be increasingly conscious of cultural context.¹⁶ Knowing international rules and having the support of experienced local counsel¹⁷ will undoubtedly help inexperienced lawyers, but first and foremost, lawyers new to the international dimension must abandon their assumptions that other legal cultures operate in the same manner as American or even British systems.

¹⁴ William C. Smith, *Avoiding Global Conflicts: U.S. Lawyers Are Discovering That Not Everyone in the Global Marketplace Always Wants To Do Things Our Way. Knowing How and When to Adjust Will Help Lawyers and Businesses Thrive Abroad*, 8 A.B.A. J., Apr. 2000, at 62.

¹⁵ *Id.*

¹⁶ Although this Note argues that American attorneys must be more culturally aware in their legal dealings, it should not be interpreted as advocating that American attorneys simply adopt foreign methods or in any way sacrifice the needs of their clients in order to conduct more fluid transactions. Kevin Block, who spent four years representing American, European, and Asian investors in Russia, cautions against such actions. He asserts that detailed and lengthy documents (somewhat unique to the American legal practice) may be necessary in foreign countries precisely because of the cultural misunderstandings that can arise. *Id.* To guard against potential problems, Block advises attorneys to "prepare and control the documents in the deal" and never assume local or international statutes will provide for your needs. *Id.*

¹⁷ Retaining local counsel is thought by some practitioners to be essential in itself. No American attorney, no matter how well schooled in cultural consciousness, will be able to keep up with every new foreign law, or even the laws of one particular country. Although this Note argues that cultural awareness is necessary for the successful resolution of international disputes, it may itself still be insufficient. *See id.*

Many American lawyers mistakenly assume foreign businesses and legal practices are similar to their domestic counterparts. Rona P. Mears, chairperson of the American Bar Association Section of International Law and Practice, says that in dealings abroad, "[y]ou can usually solve the legal problems. . . . Most deals crater because of cultural misunderstandings."¹⁸ Since cultural miscues are something diligent lawyers can usually prevent, they should take all necessary precautions to ensure that they do.¹⁹

C. Dispute Resolution in the International Context

Foreign litigation is intimidating for all those involved. It is handled very differently, is very expensive, and creates imminent apprehension of the great unknown.²⁰ The major problem is that, generally, there is no guarantee a foreign judgment will be enforced domestically, or that a domestic judgment will be enforced abroad. Under international law, the courts of one country, absent a treaty to the contrary, are under no obligation to enforce the

¹⁸ *Id.*

¹⁹ Culture influences perceptions, communications, and relationships within a particular society. It therefore also shapes the resulting business and legal practices subsequently built upon that social structure. Personal relationships and conceptions of the lawyer's role are often larger factors in international transactions than the actual business at hand. Lawyers in South Korea, for example, have traditionally been considered to be more "community mediators," who cooperate with both sides, than "hired guns," who destroy one side in favor of the other as in the United States. *Id.* In Japan, paperwork "symbolizes the beginning of an ongoing relationship" instead of the American view of it as an end in itself. Both East Asian countries value consensus and personal relationships, relying on shared experiences and circumstances to inform their perspective instead of the fine print of a well-executed contract. *Id.* Both countries differ from the United States in these respects, and failure to acknowledge these differences could lead to disastrous results.

²⁰ For details on the particulars of setting up an international arbitration system, specifically, discovery procedures, see Steven C. Bennett, *Discovery in International Arbitration—Part II*, METROPOLITAN CORP. COUNS. N.E. ed., Aug. 2000. Bennett outlines three basic principles regarding discovery in international arbitration. These principles are: 1) the primary source of information in international commercial disputes is the documentary evidence submitted by the parties; 2) international arbitrators rarely order pre-hearing depositions, and 3) the party requesting discovery must make some showing that the documents exist, are in the other party's possession, and are necessary for a just resolution of the dispute. Although over the past thirty years consensus as to these principles has become apparent, they are, nonetheless, still merely standards of practices and need to be written into arbitration provisions to ensure they will be treated as rules per se. *Id.* This article illustrates the details that must be handled in just one aspect of international arbitration. Details in all aspects of arbitration must be addressed to prevent cultural and contextual misunderstandings when resolving disputes.

judgment of another country. Even though some countries choose to honor such judgments, they do so "as a matter of discretion and comity, not international obligation."²¹ Such a lack of clear guidelines leaves many practitioners understandably insecure.

To avoid the uncertainty and intimidation of foreign courts, the international business community has "privatized" dispute resolution,²² relying on arbitration provisions that it has established. Lawyers can negotiate the procedures and situs of arbitration, the number and nationality of arbitrators, choice of law,²³ and any other dispute resolution issue they wish to resolve before business commences and conflicts ensue. Arbitration is more recognized and enforceable worldwide than court judgments, providing a time- and cost-efficient remedy for businesses caught in international disputes. Although it is not the panacea for all foreign legal problems,²⁴ it provides an invaluable opportunity to resolve legal conflicts early and get business back on track.

III. A CONCEPTUAL FRAMEWORK

International arbitration, particularly its cultural dimensions and dilemmas, is slowly evolving. As the need for international arbitration has increased, so has the attention paid to it and the attempts to simplify, modify, or even just explain how it works. Providing a conceptual framework for encompassing international arbitration is a tenuous proposition because it is still an evolving area. However, this Note attempts to present a tenable framework by tracing the rise of international understanding and noting particular paradigms set forth for the problem.

²¹ Smith, *supra* note 14, at 69–70. "Not a single country has signed a treaty with the U.S. committing to the reciprocal enforcement of judgments . . . Even Great Britain has refused to ratify a judgments treaty from fear of civil juries, punitive damages, strict liability, and other quaint aspects of the American legal system." *Id.* (quoting William W. Park, a law professor at Boston University).

²² *Id.*

²³ *Id.*

²⁴ The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has been ratified by more than 100 countries and mandates that all signatories recognize arbitration awards from other members. *Id.* The Convention is not flawless, however, as it is still subject to judicial review and the situs country's court may overturn the decision. Nor is arbitration a proper remedy for all foreign business complications. Lending transactions are not usually handled through arbitration, for instance, "since lenders fear that arbitrators are prone to 'split the baby' rather than require the debtor to pay up." *Id.* Further, as mentioned previously, enforcement is only possible through local means, and local courts have no international obligation to allow the seizure of assets to pay off foreign debts. *Id.*

A. The Rise of International Understanding

Early ADR practitioners often mistakenly ignored the cultural foundations and implications of alternative dispute resolution programs. One early source described mediation as a process that is "universal and comprehensible to people of many cultural and ethnic views."²⁵ Although this same source acknowledged that dispute resolution must be implemented so that it is "consistent with [a peoples'] beliefs and traditions,"²⁶ it failed to recognize the complexity of developing a dispute resolution system that is welcomed and accepted by people from vastly different backgrounds. Cultural concerns gained recognition slowly, mainly from international business negotiations and culture-related disputes, and have only recently attracted much more detailed attention.²⁷

Researchers examining variations in conflicts have discovered cultural differences in the conflicts themselves, the discourse used to discuss both the conflict and its resolution, and the expected outcomes. Those studying the relationship between culture and disputing seek to understand how conflicts are defined, understood, treated, and resolved in various cultural contexts.²⁸ Researchers acknowledge that understanding the local culture is critical to implementing a successful dispute resolution program and then later evaluating its efficacy and effect on that community.²⁹

Although this Note focuses on cultural differences underlying various forms of dispute resolution, the commonalities among processes and peoples should not be overlooked. Procedural fairness, for example, is an element that virtually all disputants agree is essential to dispute resolution and most cultures recognize this in their own indigenous systems.³⁰ There is an

²⁵ MICHELLE LEBARON DURYEA, UVIC INST. FOR DISP. RESOL., CONFLICT AND CULTURE: A LITERATURE REVIEW AND BIBLIOGRAPHY 20 (1992) (quoting JAY FOLBERG, ET AL., *MEDIATION: A COMPREHENSIVE GUIDE TO RESOLVING CONFLICTS WITHOUT LITIGATION* (1984)).

²⁶ *Id.*

²⁷ *Id.* at 21.

²⁸ PROGRAM ON CONFLICT RESOLUTION, *RESEARCHING DISPUTES ACROSS CULTURES AND INSTITUTIONS* 9 (1990).

²⁹ *But cf. id.* at 8. "The researchers concluded that contemporary mediation programs have paid little attention to their culture and to the assumptions that they make about the larger political world." *Id.* This focus on the purely legal aspects of dispute resolution, rather than on the broader contextual (i.e., cultural) framework is where modern ADR proponents have gone astray. They not only risk alienating those people they are trying to help in establishing dispute resolution mechanisms, they are also in danger of implementing a system doomed to failure if inconsistent with the local culture.

³⁰ DURYEA, *supra* note 25, at 23.

inherent danger of "throwing the baby out with the bathwater" in failing to recognize and utilize the positive aspects of existing dispute resolution mechanisms.³¹ Hopefully, by analyzing the cultural differences underlying dispute resolution, the commonalities will become clearer and implementers of dispute resolution programs will discover common ground on which they can build even stronger ADR structures.

B. Paradigms for the Problem

In recent years there has been a growing interest in cross-cultural conflict resolution among dispute resolution theorists and practitioners, which has in turn led to a greater appreciation of the dispute resolution techniques employed by other cultures.³² Because broad cultural analysis is still somewhat novel in the dispute resolution context, the cultural paradigms governing such analyses are still shifting and evolving. Some consistent frameworks in which to examine cultural variations do exist, however. Researchers have identified three interacting primary components of a culture: 1) material culture, which depends on the ecosystem; 2) social culture, which is the arrangement of familial, political, and economic groupings; and 3) ideological culture, which is the underlying belief system of a people.³³ Conflicts fitting into these three categories, so-called "culture wars," have been fought over such issues as family, politics, and education, and "stem from deep and incompatible differences over the sources of moral authority."³⁴ Putting such conflicts into these three categories helps break down the many cultural nuances surrounding dispute resolution into a much more manageable framework. Appreciating elements within all three cultural components is essential to understanding the larger context in which you are operating.

One researcher has said that "to view the phenomenon of conflict as influenced by culture as unidimensional or unidirectional is clearly flawed . . ."³⁵ Examining the complex and dynamic attributes of culture produces a more realistic and probable system of dispute resolution. Factors that most affect how parties within a particular culture interact are considered to be: a) the degree of individualism versus collectivism; b) patterns of communication; c) the nature of agreements; d) the use of time; and e) risk

³¹ *Id.* at 26.

³² E. FRANKLIN DUKES, *RESOLVING PUBLIC CONFLICT: TRANSFORMING COMMUNITY AND GOVERNANCE* 39 (1996).

³³ *Id.* at 127.

³⁴ *Id.* at 167.

³⁵ DURYEA, *supra* note 25, at 33.

propensity.³⁶ Cultural norms can be so powerful they may affect whether a conflict is seen to exist at all.³⁷ Cultural values can relate to setting, language, procedural structure, and conceptions of time.³⁸

Researchers have classified three forms of "cultural constraints" as one type of paradigm used to examine conflict matters.³⁹ These three constraints are 1) cognitive, which involves beliefs that preclude a certain way of thinking about conflict; 2) behavioral, which dictates what verbal and nonverbal conduct will be deemed appropriate in a certain context; and 3) emotional, which is the cultural recognition of the appropriate emotional response in any given situation.⁴⁰ Although difficult to detect practically, and even harder to dissect analytically, practitioners must nonetheless acknowledge these underlying constraints on their cultural interactions. Failure to see what shapes cultural norms renders any appreciation or presumed understanding of that culture moot.

The advantage of alternative dispute resolution in a cultural context is that it examines the interests underlying the parties' positions in order to evaluate the needs, concerns, and desires of each side.⁴¹ Researchers realize that cultural constructions of personhood, conflict (specifically, its genesis, management, and resolution), and rationality are factors crucial to understanding how different cultures interpret and respond to conflict situations.⁴² One way to analyze such factors is through high and low "context cultures." "Low context" cultures like the United States, Canada, and central and northern Europe are characterized by individualism, heterogeneity, and overt communication.⁴³ "High context" cultures like Asian and Latin American countries, on the other hand, focus on collective identity, homogeneity, and covert communication.⁴⁴

³⁶ Andrew Sagartz, *Resolution of International Commercial Disputes: Surmounting Barriers of Culture Without Going to Court*, 13 OHIO ST. J. ON DISP. RESOL. 675, 682-83 (1998).

³⁷ DURYEA, *supra* note 25, at 30. Conflict can be a very personal matter and thus not brought out into the public sphere for discussion and remedy. People may be self-conscious about their involvement in a conflict or whether or not they exhibited the proper response. A variety of cultural factors may cause a conflict to go unreported at all, let alone brought into the realm of dispute resolution to be remedied. *Id.* at 30.

³⁸ *Id.* at 32.

³⁹ *Id.* at 33.

⁴⁰ *Id.*

⁴¹ *Id.* at 42.

⁴² SHAILOR, *supra* note 5, at 22.

⁴³ DURYEA, *supra* note 25, at 39.

⁴⁴ *Id.*

Cultures can also be categorized as having specific-role or diffuse-role orientation. Western cultures are considered to follow "specific-role" orientation, because they are primarily concerned about the individual fulfilling a particular role and, for the most part, they are not concerned with that individual's politics, religion, or personal taste. Eastern cultures like China and India are commonly considered to be "diffuse-role" oriented because they do consider other factors other than simply the fulfillment of a specific role and do take into consideration the individual in his entirety, including his personal beliefs and preferences.⁴⁵

Whichever paradigm one uses to analyze cultural context, it is important to keep in mind that no paradigm is perfect and all are still evolving in their applicability to different cultures. The best solution for the practical practitioner, then, is to become familiar with all the paradigms and pick those most applicable to his particular context.

IV. CULTURAL PERSPECTIVES

With general paradigms in mind, this Note now tackles specific examples of countries fitting into three broad cultural categories. These examples will explore cultural differences and prove the complexity of cross-cultural dispute resolution. Before venturing out beyond familiar terrain and leaving what is known, however, practitioners need to put their own cultural predispositions aside and prepare to delve into the great unknown.

A. In Our Own Backyard: An American Introspection

One of the great dangers in approaching a cultural analysis of dispute resolution processes is that of ethnocentricity. Ethnocentricity in this context can be defined as the tendency to value what is familiar and predictable, and to view one's own cultural norms as "correct" and "natural" and, therefore, better than those that differ.⁴⁶ To counteract this hazard, one should examine one's own cultural context first and then extrapolate to other cultures, in this way recognizing all assumptions made and biases believed and more honestly assessing the situation. This Note, therefore, first addresses American cultural underpinnings before examining dispute resolution abroad.

Many American practitioners believe dispute resolution is a modern phenomenon with its roots in other, mainly non-Western, cultures that traditionally have had a greater appreciation and utilization of informal

⁴⁵ *Id.* at 44.

⁴⁶ *Id.* at 47.

methods of dispute resolution.⁴⁷ A prime example is the consensus-based decision-making style Native American and other aboriginal populations employ.⁴⁸ However, other cultural factors deeply embedded in American culture have themselves prompted the growth of dispute resolution throughout the years.

Americans have traditionally relied more on community and religious institutions than the law to settle disputes and promote social values. Judeo-Christian beliefs, for example, focus on individual and social responsibility for resolving conflicts.⁴⁹ Many other identifiable communities share this value for social harmony over more formalized dispute settlement mechanisms (i.e., those which are state-run).⁵⁰ Thus, each group within the American mosaic, having its own culture of dispute resolution, contributed to the creation and amalgamation of the larger American system of dispute resolution.

B. *Global Models*

Although many native forms of alternative dispute resolution exist throughout the world, the recent mushrooming of dispute resolution processes and analyses in the United States has inspired a new exploration into alternative methods of dispute resolution elsewhere in the world.⁵¹ Researchers have identified three distinguishable categories of dispute resolution culture: 1) those highly influenced by U.S. models of dispute resolution; 2) systems that combine foreign and native elements; and 3) indigenous or national models.⁵²

Concepts shape culture in ways often overlooked because of the comfort with which they are used and reused over time. For example, the Western idea that "time is money" is completely alien to Asian, Latin American, and African cultures. This simple concept nonetheless "affects the pace of negotiations and the punctuality of meetings" for Western participants that will inevitably conflict with the conceptions and behaviors of their

⁴⁷ DUKES, *supra* note 32, at 25.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Some of these communities include New England congregations, Quakers, Amish, Mennonites, Mormons, Chinese in San Francisco, Dutch in New Amsterdam, Jews of Lower East Side of Manhattan, and Scandinavians in Minnesota. *Id.* at 26.

⁵¹ Christian Duve, *Dispute Resolution in Globalization Context*, N.Y. L.J., Apr. 12, 1999, at 9.

⁵² *Id.*

international counterparts.⁵³ Similarly, the concept of bargaining differs greatly between cultures. Scandinavians, for instance, begin bargaining at a position very close to that which they would ultimately accept, whereas Saudis bargain aggressively, starting at a much higher position and then working their way down.⁵⁴ A recent multicultural study raised still other potential sources of cultural conflict, including differences in background, training, responsibilities, identities, and loyalty of organizational members.⁵⁵

Examples of cultural nuances in dispute resolution abound, and all point to the conclusion that understanding these nuances is essential to implementing a sound system of dispute resolution. There is no question that dispute resolution forms are determined to some extent by the social and cultural environment in which they exist. Although researchers tend to focus on geographic areas, cultural factors beyond geography are illuminating as well. Such factors include the number of different cultural groups, cohesion within those groups, propensities to factional organization, degree of social stratification, scarcity of resources, and organization of the state.⁵⁶ Whatever culture one chooses to explore, the past, present, and future of successful dispute resolution depends on acknowledging such cultural clues.

Asian and Pacific countries provide an excellent comparison for cultural purposes because of the diverse ways in which their dispute resolution forms have developed. These countries provide a breadth of cultural perspective spanning all three cultural categories. This Note will trace the cultural development and differences in dispute resolution practices through Asian and Pacific countries, using as a guide the three categories of culture.

⁵³ Urs Martin Lauchli, *Cross-Cultural Negotiations, with a Special Focus on ADR with the Chinese*, 26 WM. MITCHELL L. REV. 1045, 1050 (2000).

⁵⁴ *Id.* at 1051.

⁵⁵ Illustrating yet another cultural aspect of bargaining, negotiators from individualist societies like the United States seek to bargain with the "top person" on the other side, whereas negotiators from community-oriented cultures like Japan focus on reaching consensus within the entire group and not just any one individual. *Id.*

⁵⁶ W.L.F. FELSTINER, FORMS AND SOCIAL SETTINGS OF DISPUTE SETTLEMENT 7-36 (Yale Law School Program in Law and Modernization, Working Paper No. 3, 1971). In East Africa, for example, the police role in settling disputes is marginal, whereas in India, the police play a significant role in dispute resolution. The Kpelle, a culturally unique group found in central Liberia and Guinea, rely primarily on village mediators and choose to employ the coercive sanctions of courts only in specific cases of assault and theft. When disputes arise between members of different factions in Lebanese villages, courts handle the matter rather than the village mukhtar because the mukhtar, whose duty is to maintain peace, is considered to lack impartiality. Similarly, the Arusha of Tanzania rely on courts when the loyalties of mediators cannot be relied upon. *Id.*

1. U.S.-Influenced

The first category and one that is increasingly expanding is comprised of those countries that derive many of their dispute resolution mechanisms from processes employed in the United States. While Asian countries are more likely to have dispute resolution mechanisms in place as a result of their particular cultural values, European legal culture is much more adjudicatory and, therefore, heavily influenced by the American model when designing dispute resolution processes.⁵⁷

China, Japan and Korea can be grouped together for one example.⁵⁸ All three of these countries developed strong national forms of dispute resolution, but as dynamic international industries, quickly evolved into paragons of U.S.-influenced dispute resolution. All three of these countries were dramatically influenced by Confucian ideals of harmony and compromise and, thus, have historically leaned against adjudication in state courts.⁵⁹ Members of these societies were taught to yield rather than fight, and airing conflicts publicly was the equivalent of admitting failure and hindering future reconciliation efforts.⁶⁰ Confucian teachings focus on reciprocity, loyalty, piety, duty, obedience, respect, and mutual faith and trust. The individual is de-emphasized and harmonious human relationships center around the common good.⁶¹ Asian cultures typically do not share Western values of privacy, favoring instead to handle conflict diplomatically

⁵⁷ Duve, *supra* note 51.

⁵⁸ Although I include Japan in the U.S.-influenced category because of its modernization and internationally focused arbitration efforts, it provides a telling example of how ancient cultural influences affect present-day interactions. Richard Eastman, head of the Tokyo office of Whitman Breed Abbott & Morgan LLP, lays out some of the fundamental cultural considerations that need to be considered when negotiating. He notes the importance of harmony in Japanese relations and how this often conflicts with American values of frankness and clarity. Richard A. Eastman, *The Cultural Dimension in Transactions with Japanese Companies*, THE METROPOLITAN CORPORATE COUNSEL, June 2000, N.E. ed. at 16. The Japanese often describe a situation they know to be impossible to be merely "difficult" in order to avoid conflict or, similarly, will neglect to raise delicate or contentious points that would hinder negotiations, believing that these points can be ironed out in later dealings. *Id.* Other relevant factors in Japanese arbitration include the emphasis on hierarchy, respect, consensus and personal relationships over more American values like logic, individualism, and the belief in certain universal rules. *Id.* Eastman concludes with this sage advice: "There is no simple solution to these issues, but awareness of the differences in approach may help both sides to avoid misunderstandings." *Id.*

⁵⁹ FELSTINER, *supra* note 56, at 54.

⁶⁰ *Id.*

⁶¹ DURYEA, *supra* note 25, at 22.

and within the community. As Victor Hao Li describes it, “[It] is nearly impossible to say ‘privacy’ in the Chinese language so as to convey the full English flavor of personal freedom, individuality, and a sense of being shielded from undo outside influences—all matters closely affected by law.”⁶²

China,⁶³ although still steeped in Confucian traditions, is becoming more open to the outside world and foreign, particularly American, influences in the field of dispute resolution. A historical understanding of China and its treatment of foreigners is particularly illuminating in a dispute resolution context. China has traditionally been intolerant of, if not outright hostile to, outside influences.⁶⁴ The American Bar Association was initially pessimistic about relations with the Chinese but has since changed its position, recognizing that China is rapidly becoming “a new epicenter for industry, commerce and finance” and faces the distinct possibility of “becoming the pre-eminent global power.”⁶⁵

Before Western ideas took root in China, dispute resolution was primarily the responsibility of the village and family elders, with the goal of restoring harmony and granting concessions. China looked westward for legal advice in 1911, and then to the Soviet Union in 1949.⁶⁶ Current Chinese dispute resolution techniques, including conciliation, arbitration, mediation, and litigation, display an array of institutional differences mirrored in both European and American court-annexed dispute resolution programs.⁶⁷

⁶² *Id.* at 32.

⁶³ Although China, Korea, and Japan all share traits that would put them into the U.S.-influenced category of dispute resolution cultures, this Note focuses primarily on China simply because there is much more written on legal relations with the Chinese, particularly when focusing on cultural considerations and the dispute resolution context. For more on Chinese dispute resolution culture in particular, see Fredrick Brown & Catherine A. Rogers, *The Role of Arbitration in Resolving Transnational Disputes: A Survey of Trends in The People's Republic of China*, 15 BERKELEY J. INT'L L. 329 (1997); Michael T. Colatrella, Jr., “Court-Performed” Mediation in the People's Republic of China: A Proposed Model to Improve the United States Federal District Courts' Mediation Programs, 15 OHIO ST. J. ON DISP. RESOL. 391 (2000).

⁶⁴ Lauchli, *supra* note 53, at 1054. Examples of such hostility towards outsiders can be seen in the Opium War of 1839–42, and through repeated attempts to remove all foreigners from China, as in the Boxer Rebellion in 1900 and in Communist China policies in effect until 1972. *Id.* at 1054–55.

⁶⁵ *Id.* at 1055–56.

⁶⁶ *Id.* at 1060.

⁶⁷ *Id.* at 1065. If this Note seems focused on the need for Americans to understand other cultures, the reverse is intended and advocated just as strongly. Foreigners engaging in dispute resolution with the Chinese, for instance, obviously need to be familiar with that country's history and culture, particularly as they impact dispute resolution.

Despite the gains toward internationalization and Western-influenced development, successful practitioners in China do well to remember the cultural background of that country, particularly the focus on long-term relationships.⁶⁸ No matter how similar or Western-like a foreign system may now appear, its cultural roots cannot be ignored.

2. *Mixed or International Approach*

The mixed category of countries combines an indigenous method of dispute resolution with one that has been imported. Asian countries, particularly Hong Kong, Singapore, Thailand, and Indonesia, span the range from strident breaks with Western models to gradual acceptance and promotion of them. Each presents its own valuable lessons for dispute resolution development.

Dispute resolution in these countries has blossomed in the last fifteen years, mostly as a result of the development of their inherited systems of dispute resolution left behind from colonial arbitration laws.⁶⁹ Evidence of the recent "arbitration craze" in Southeast Asia can be found in the proliferation of arbitration centers and the enactment of arbitration laws throughout the region.⁷⁰ Each region's particular adaptation of arbitration laws differs, but all agree that such laws are necessary and focus on fusing indigenous Asian dispute resolution philosophy with imported colonial arbitration laws and "transnational concepts."⁷¹ This trend results in part from the need to make colonial dispute resolution mechanisms more suitable to today's context, and in part from the desire of local cultures to mold an appropriate system of dispute resolution for their own particular needs.

In light of these needs, Hong Kong and Singapore have adopted individualized arbitration laws building upon their own cultures and borrowing from others. Both began as British colonies in which English statutes and common law of arbitration were applied. Each has developed differently, however. Singapore followed English reforms which led to greater judicial intervention, but then in 1994 adopted the UNCITRAL Model Law on International Commercial Arbitration returning party

However, this shared cultural appreciation needs to be a two-way street to operate most effectively. As foreigners remind themselves of the importance of virtue, deference, and traditional values in Chinese culture, so too China will hopefully diminish its distrust of outsiders, honor institutionalized proceedings, and recognize international standards that may not be beneficial to particular Chinese interests. *Id.* at 1073.

⁶⁸ *Id.* at 1069.

⁶⁹ Schaefer, *supra* note 2, at 30.

⁷⁰ *Id.*

⁷¹ *Id.*

autonomy.⁷² Hong Kong also adopted British reforms and the UNCITRAL Model Law, but was returned to China in 1997 and had its arbitration laws modified yet again.⁷³ Both Hong Kong and Singapore's developments arose out of a dissatisfaction with arbitration reform in the 1990s, although both countries still desired to be tied somewhat to their English model.⁷⁴

The mixed-form of development in these two countries stems from their culture as city-economies dependent on service industries. Realizing that it was in their best interest, they vigorously developed very straightforward international approaches toward international arbitration, and have since become leading arbitral venues.⁷⁵

The mixed approach as found in Thailand and Indonesia takes a less Western-friendly and less economic-based approach. Both of these countries have tried to reconcile domestic and international arbitration, but have not yet fully succeeded. No clear law has yet been established in Thailand or Indonesia, possibly because in vast territorial states this is a more difficult undertaking.⁷⁶

Thailand is traditionally not as advanced an arbitration culture, but of late has been encouraging the local community to develop dispute resolution systems.⁷⁷ The Thai system is similar to American arbitration in its concern with emotion; however, the American system focuses on the anger of the disputant while the Thai system deals with anger by dealing with the dispute. The expression of anger in Thailand is thought to be destructive of social relations, and, therefore, the mediator attempts to draw out the positive feelings and repress the negative, with the goal being agreement, harmonious social relations, and no cause for anger (or at least no outlet to express it).⁷⁸ At root is a tension between the claims of the individual and those of society, with

an emphasis on positive social sentiment, on interdependency, on common reliance on kinship as a model of proper relations between co-villagers. There is a corresponding de-emphasis of the moral and legal aspects of the

⁷² *Id.* at 34.

⁷³ *Id.*

⁷⁴ *Id.* at 31, 34.

⁷⁵ *Id.* at 35.

⁷⁶ *Id.* at 35.

⁷⁷ Because Thailand was never under colonial rule, it adapted Western-style laws to fit the Thai Code of Civil Procedure in the nineteenth century. Thailand only adopted one arbitration provision, however, and so has had much further to come in developing its own arbitration provisions in recent times. *Id.* at 2, 6.

⁷⁸ PROGRAM ON CONFLICT RESOLUTION, *supra* note 28, at 11.

situation, of rights and injuries, and of the power that each party may have to force an outcome.⁷⁹

Indonesia provides a more drastic developmental history. Wanting a more strident break from the Netherlands, Indonesia developed more particularized and non-European arbitration laws.⁸⁰ Indonesian courts traditionally had a negative reputation and had been against formal means of dispute resolution. Members of this culture typically preferred local amicable dispute resolution culture and this persisted through colonial times. The political, economic, and legal instability also made the establishment of a formal dispute resolution mechanism more difficult.⁸¹ The former colonial arbitration laws were applied differently depending on the ethnic group, with the Dutch (French-based) model applied to Europeans, less complex laws applied to the Chinese, and the native Malay laws left intact as applied to the native population.⁸² Indonesia abolished these separate regimes after gaining its independence and slowly developed a more particularized version of dispute resolution.⁸³

Although each of these countries differs in approach, they all combine elements of both indigenous and foreign dispute resolution practices. Each country's motivation reflects its own cultural underpinnings and determines the extent to which it will look to or accept outside views. Regardless of the extent of outside influence allowed in, every country remains inextricably linked to its cultural heritage in deciding which route to choose.

3. *Indigenous or National Model*

Finally, the indigenous or national model recognizes the existence of a strong native system of dispute resolution, one that, if affected by outside cultures, has only been so mildly.⁸⁴ There, conflict resolution practices in China, for example, have been built upon indigenous values and processes and have been modified only slightly throughout history. Cooperation and persuasion have been lauded for centuries as essential conflict resolution techniques, and despite some outside influence, still are today.⁸⁵ However, China realized that in order to be a viable international player, especially one

⁷⁹ *Id.*

⁸⁰ Schaefer, *supra* note 2, at 34.

⁸¹ *Id.* at 36.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Duve, *supra* note 51.

in major trade status with the United States, it would have to develop its practices along Western-inspired lines and did so accordingly. The Pacific Islands, by contrast, have preferred to maintain their own indigenous methods despite economic or other outside influences.

Malaysia and the Pacific Islands best exemplify the national approach. Malaysia, another former British colony, did not adapt the English arbitration law reforms of 1975, 1979, or 1996, and, therefore, lacks focus on party autonomy and instead yields extensive supervisory powers to the court.⁸⁶ Although Malaysia hosts the Kuala Lumpur Regional Center for Arbitration, its arbitration law, although quite strong domestically, is vastly inadequate for international arbitration purposes. The members of this society seem satisfied with the domestic system and have not yet expressed interest in pursuing international development.⁸⁷

Similar to Malaysia, the Pacific Islands have preferred an independent and indigenous method of dispute resolution. While American alternative dispute resolution programs give great attention to individual psychological states, in the Pacific islands the focus is instead on the larger social group.⁸⁸ Individuals' feelings are assumed to be secondary in the Pacific, with primary emphasis on group concerns or needs. The purpose of dispute resolution in the Pacific culture is to restore group harmony by repairing the individuals' relations underneath.⁸⁹

Although these findings group the Pacific Islands as a whole, researchers found great diversity even within the various cultures of the Pacific islands. "Although the researchers were able to establish the causes of this diversity, it appears that the leadership structure of a society, and the degree to which Western conflict-resolving institutions have penetrated the society (e.g., Western-style court system) are important."⁹⁰ The diversity within the Pacific Islands itself proves the extent to which indigenous culture comes to the fore. Although some generalities can be drawn from these examples, each culture is unique and affects in very different ways the development of dispute resolution in that area.

Using these three categories of countries broadly, practitioners can examine the extent to which a country may have already opened its doors to outside influences, or else whether it may be willing to do so in the future. Although the globalization of the marketplace and increasing necessity of cross-cultural transactions points to more international models of dispute

⁸⁶ Schaefer, *supra* note 2, at 33–34.

⁸⁷ *Id.* at 36–37.

⁸⁸ PROGRAM ON CONFLICT RESOLUTION, *supra* note 28, at 10.

⁸⁹ *Id.*

⁹⁰ *Id.*

resolution in most countries, each country is original and must be examined and dealt with as such.

V. LESSONS FOR THE LEARNED AND LEARNING

As the shifting paradigms and complex examples explored in this Note demonstrate, there is still much to learn in the field of international dispute resolution. Conceptual frameworks have been established, and headway has been made into both understanding and developing more culturally conscious dispute resolution systems. Problems and limitations remain, however, looming over current and future dispute resolution efforts. Lest the illumination of problems discourage practitioners from continually trying to develop newer and better ways to approach problems in this area, however, this Note also offers helpful tips from practitioners who have made it through the cultural abyss and returned to tell and teach about it.

A. *Problems and Limitations*⁹¹

Methods of critically examining dispute resolution across cultures have come a long way in recent years. Many current problems with dispute resolution analysis and implementation deal specifically with transitioning states—those countries or territories undergoing dramatic economic, political, or social change. Transitioning states face a myriad of institutional challenges, including the critical challenge of strengthening the rule of law.⁹² International organizations and government development agencies (such as USAID, the World Bank, and the United Nations) assist transitioning states in strengthening the rule of law by supporting judicial reform efforts.⁹³ However, dispute resolution program design, implementation, and operation

⁹¹ For information beyond the limitations to cultural understanding of dispute resolution to the problems of international arbitration in general, see James D. McCarthy & J. Gregory Taylor, *Perils of International Arbitration*, TEX. LAW., Mar. 8, 1999, at 26. Some of the practical limits on international arbitration include: 1) limited party discovery; 2) limited access to nonparty witnesses; 3) lack of recognition of the attorney-client privilege; 4) inability to join related parties and disputes; 5) limited injunctive relief; and 5) lack of appellate recourse. *Id.* Despite the complications and setbacks associated with international arbitration, these authors still believe it “is and should be the principal method for the resolution of international business disputes.” *Id.*

⁹² Anthony Wanis-St. John, *Implementing ADR in Transitioning States: Lessons Learned from Practice*, 5 HARV. NEGOT. L. REV. 339, 339 (2000).

⁹³ *Id.* at 339–40.

remain in many cases “qualitatively different in the context of transitioning states.”⁹⁴

Additional problems plaguing transitioning states are incomplete legal frameworks, power disparities among disputants, new frameworks for international investment, strong extra-legal indigenous norms of conflict management, and variation in the amount and quality of human and financial resources.⁹⁵ Because of the particular difficulties affecting transitioning states, it is exceptionally difficult to assess the effectiveness of dispute resolution implementation since the information and infrastructure required for such analyses are drastically lacking.⁹⁶

Other limitations of dispute resolution are more universal. First, dispute resolution in any state cannot be expected to redress pervasive injustice or human rights problems requiring policy changes.⁹⁷ Second, dispute resolution “cannot always adequately resolve cases between parties in which there are significant power asymmetries.”⁹⁸ Third, alternative dispute resolution “does not provide demonstrative justice in cases requiring public sanction.”⁹⁹ Fourth, it is an inappropriate mechanism when one or more parties are absent from the process.¹⁰⁰ Finally, “development resources should not be diverted to” dispute resolution “at the expense of comprehensive judicial reform.”¹⁰¹ Although dispute resolution is an important structural and procedural element to the development of any state, it should not take precedence over those elements that necessarily must come first.

There is vast potential for miscommunication if cultural context is ignored, and implementers must pay careful attention to verbal and nonverbal behaviors and inadvertent acts and omissions.¹⁰² Common pitfalls encountered when studying conflict and culture are the facets of multiple cultures (i.e., national, regional, ethnic, religious), lack of predictability (i.e., individuals may not act predictably in accordance with cultural assumptions), evolution of cultural norms over time, and individuality (the fact that group

⁹⁴ *Id.* at 340.

⁹⁵ *Id.*

⁹⁶ *Id.* at 347.

⁹⁷ *Id.* at 375–76.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² DURYEA, *supra* note 25, at 40.

behavior can not always be extrapolated to apply directly to individuals within that group).¹⁰³

Despite all of these problems, hope for sound international dispute resolution is not lost. Rather than discouraging practitioners in the future, the mistakes of the past should illuminate the possibility for even greater growth and development in this area. The following practical advice accumulated by many individuals with many years of experience should offer a helpful guide to those who wish to continue in the struggle for culturally conscious dispute resolution.

B. Points for Practitioners

To be successful, implementers of dispute resolution across cultures need to know and recognize certain facts. Implementers must acknowledge that indigenous methods of conflict resolution do exist and, stemming from this, appreciate the different capacities, needs, and customs on which a system of dispute resolution should be built.¹⁰⁴ There are internal and external dimensions to implementing dispute resolution that should also be recognized.

Internally, states must provide adequate mechanisms in order for dispute resolution to operate and make a determination of the rights and responsibilities of individuals and organizations within that state that will be recognized and protected.¹⁰⁵ Internal organization is often the point where practitioners make the mistake of ignoring foreign culture in lieu of more familiar American norms. However, understanding the foreign internal structure is essential before developing a more international dispute resolution system, because practitioners must understand the native culture before building bridges to others.

Externally, state participation in multilateral organizations and international legal regimes affects whatever form of dispute resolution is implemented.¹⁰⁶ Participation in the World Trade Organization, European Union, or North American Free Trade Agreement, for example, requires that states meet minimum standards of governance and are able to safeguard economic rights of foreign investors.¹⁰⁷ Requisite background conditions must also exist for dispute resolution to be successful. These conditions include political and grass roots support, supportive cultural context,

¹⁰³ See *id.* at 31.

¹⁰⁴ Wanis-St. John, *supra* note 92, at 340–41.

¹⁰⁵ *Id.* at 342.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

adequate human resources, program design considerations, and selection of a well-socialized facilitator.¹⁰⁸

Lessons from experience yield valuable advice. Leo J. Ryan offered practical tips on the "toolbox" approach before the Fourteenth Annual Dispute Resolution Conference. He explained that "[d]iversity is about facilitation and participation," and also that a "cookbook" of recipes designed to provide a solution for every situation is simply not practicable.¹⁰⁹ Instead, Ryan explained "you need to know what tool is appropriate for what situation, and what isn't."¹¹⁰ Ryan's larger message was that to be successful in a multicultural context, facilitators need to understand different viewpoints, abandon stereotypes and dangerous assumptions, and appreciate that "[e]veryone has something to offer."¹¹¹

Turning to the implementation of successful programs in general, dispute resolution programs can support and complement court reform efforts if the following suggestions are implemented: 1) by-pass ineffective and discredited courts; 2) increase popular satisfaction with dispute resolution; 3) increase access to justice for disadvantaged groups; and 4) reduce costs and delays in the resolution of disputes.¹¹² These practical considerations, if acknowledged, will go a long way in establishing a more successful dispute resolution system that is consistent with legal reform efforts.

Alternative dispute resolution also supports other development objectives such as strengthening civil society and increasing public participation in policy debates.¹¹³ Effective dispute resolution mechanisms generally reduce the level of conflict in a given community by disposing of outstanding conflicts and demonstrating their tractability.¹¹⁴ Dispute resolution also helps to resolve social disputes that affect other development objectives.¹¹⁵ Although dispute resolution proponents overestimated the direct effect alternative dispute resolution programs would have on social change, such programs did affect the local culture regarding how people were taught to resolve conflicts, gradually building a base for future alternative dispute development.¹¹⁶

¹⁰⁸ Sagartz, *supra* note 36, at 705.

¹⁰⁹ *Building a Multicultural Organization? Get a Toolbox*, 6 FED. HUM. RESOURCES WK., Sept. 7, 1999, LEXIS, Nexis Academic Universe, Legal News File.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Wanis-St. John, *supra* note 92, at 373-74.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ PROGRAM ON CONFLICT RESOLUTION, *supra* note 28, at 5-6.

VI. OUTLOOK ON THE FUTURE OF CULTURALLY-CONSCIOUS
DISPUTE RESOLUTION

The combined factors of exponential growth of alternative dispute resolution in the last century and the closer integration of the world community lend themselves to the hypothesis that the use of dispute resolution throughout the world will only increase in the future.¹¹⁷ In particular, multinational corporations will likely develop and promote the use of dispute resolution as national boundaries become less and less significant in the business context. Although the cultural dynamics of dispute resolution are complex and important, they are likely much easier to learn, agree upon, and master before and during cross-cultural business deals than relying on foreign court systems once a conflict has arisen. As proof of this prediction, the corporate counsel of fifty major European companies participated in a conference exploring various dispute resolution models and confirmed the growing interest in this field.¹¹⁸

One researcher noted that "changing demographics demand increased awareness if we are to move to a more equitable, inclusive society in all places where dispute-processing takes place" ¹¹⁹ The need for such attention is so great, this researcher admonishes, that "if such measures [to increase cross-cultural awareness] are not taken, we are moving toward a dangerous future of problematic intercultural relations."¹²⁰

This Note seeks not to threaten or scare, but rather to inspire practitioners with the possibility of what lies ahead. Acknowledging cultural influences and intractable differences and also formulating a coherent framework in which to deal with cultural complications are both essential first steps in dispute resolution development. Extrapolating from the models presented in this Note and learning from the experiences of established practitioners should make those involved in international dispute resolution less fearful about the future. Admittedly, there are problems and shortcomings with international dispute resolution as with all legal forms. However, given time and cultural sensitivity, dispute resolution in the years ahead may flourish beyond anyone's expectations and any cultures' current beliefs.

¹¹⁷ Duve, *supra* note 51, at 10.

¹¹⁸ *Id.*

¹¹⁹ DURYEA, *supra* note 25, at 13–14.

¹²⁰ *Id.* at 14.